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DOCKET FILE COPY ORIGINAL

Of Counsel
William H. BuRoss, III
Ruth S. Baker-Battist
Robert J. Keller

November 12, 1999

Magalie R. Salas Esq.
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Couner - TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

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NOV 12 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

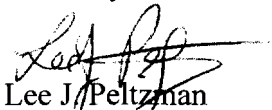
Re: MM Docket No. 88-577
Biltmore Forest, North Carolina
Motion to Enlarge

Dear Ms. Salas:

Transmitted herewith, on behalf of Orion Communications Limited, applicant in the above-referenced Commission proceeding, is an original and fourteen (14) copies of its Motion to Enlarge against Liberty Productions, a Limited Partnership.

Please contact the undersigned in the event the Commission has any questions with respect to this filing.

Sincerely,



Lee J. Peltzman
Counsel for

ORION COMMUNICATIONS LIMITED

Enclosure

No. of Copies rec'd 0 + 14
List ABCDE

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 12 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 88-577
)	
LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
A LIMITED PARTNERSHIP)	
)	
WILLSYR COMMUNICATIONS)	File No. BPH-870831MJ
LIMITED PARTNERSHIP)	
)	
BILTMORE FOREST)	File No. BPH-870831MK
BROADCASTING FM, INC.)	
)	
SKYLAND BROADCASTING)	File No. BPH-870831ML
COMPANY)	
)	
ORION COMMUNICATIONS)	File No. BPH-870901ME
LIMITED)	
)	
For a Construction Permit for a New)	
FM Broadcast Station on Channel 243A)	
at Biltmore Forest, North Carolina)	

To: The Commission

MOTION TO ENLARGE

Orion Communications Limited ("Orion"), by its counsel and pursuant to Section 1.229 of the Commission's rules,¹ hereby moves to enlarge the issues in the above-captioned

¹ This Motion to Enlarge is timely filed pursuant to Section 1.229(b) of the Commission's rules. This Motion is filed within fifteen (15) days of the release of a Public Notice, DA 99-2355, which stated that the Commission would be lifting its stay of this hearing proceeding in order to permit the resolution of basic qualifications issues involving Liberty. It is unknown at this time whether the Commission will actually issue an Order, like it did when it stayed this proceeding, setting down procedural dates so that the hearing can recommence. Therefore, in an abundance of caution, Orion is treating the October 28, 1999, Public Notice as the Commission action recommencing the hearing. This Motion to Enlarge is based on facts which have only recently become relevant as a result of the Commission auction. As such, there is good cause for its filing. It should be additionally noted that, pursuant to Section 1.229(d) of the Commission's rules, official notice may be taken of the relevant and material facts which support the addition of issues against Liberty.

proceedings to include the following issues against Liberty Productions, a Limited Partnership ("Liberty"):

1. To determine whether Liberty has made misrepresentations to the Commission regarding its eligibility for a New Entrant Bidding Credit.
2. To determine in light of the evidence adduced on the foregoing issue whether Liberty is qualified to be a Commission licensee.

In support of its issue request, Orion respectfully submits the following:

1. On August 5, 1999, the Commission released a Memorandum Opinion and Order, FCC 99-201, which concluded that the FCC would attribute the mass media interests of investors holding more than a 33% equity and/or debt interest in a broadcast auction bidder claiming a New Entrant Bidding Credit, even if such an interest were non-voting. Two weeks later, on August 19, 1999, the Commission released a Public Notice, DA 99-1663, which again advised applicants taking part in the upcoming broadcast auction of the revision in the eligibility standards for the New Entrant Bidding Credit to be used in broadcast auctions.

2. Liberty is a limited partnership, organized under the laws of the State of North Carolina, with one general partner, Valerie J. Klemmer, and one limited partner, David T. Murray. Ms. Klemmer holds a 35% equity interest and Mr. Murray holds a 65% equity interest. National Communications Industries, 5 FCC Rcd. 2862, 2868 (Adm.L.J., released May 4, 1990).

3. Murray Communications is the licensee of Station WLJQ(FM), Colonial Heights, Tennessee. According to an Ownership Report filed for that company with the Commission, David T. Murray, is a 50% general partner in Murray Communications. His wife, Martha R. Murray, is the other 50% general partner. See Exhibit 1.

4. Liberty filed its auction application on FCC Form 175 on August 19, 1999. In its application, it claimed that it was eligible for a New Entrant Bidding Credit. See Exhibit 2. Despite the Commission repeated notification that applicants must attribute the mass media interests of investors, like David Murray, holding more than a 33% equity and/or debt interest in the bidder claiming a New Entrant Bidding Credit, Liberty failed to disclose Mr. Murray's ownership interest in Station WLJQ(FM). And, not surprising, the Commission afforded Liberty a 35% New Entrant Bidding Credit, which Liberty had sought, throughout the auction, thereby permitting Liberty to be the high bidder at the FCC auction.

5. It is uncontroverted that the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and that applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate. This duty of candor is basic and well known. See RKO General, Inc. v. FCC, 670 F.2d 215, 232 (D.C. Cir. 1981), cert. denied 456 US 927 (1982); Sea Island Broadcasting Corp. v. FCC, 627 F.2d 240, 243 (D.C. Cir.) cert. denied, 449 U.S. 834 (1980). As the Court has noted, "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees...Indeed the FCC would be derelict if it did not hold broadcasters to 'high standards of punctillio,' given the special status of licensees as trustees of a scarce public resource." Leflore Broadcasting Co., Inc. v. FCC, 636 F.2d 454, 461 (D.C. Cir. 1980). Thus, the Commission is entitled to demand complete and absolute candor from those who come before it seeking grants and applicants have an affirmative obligation to disclose all relevant information. See FCC v. WOKO, Inc., 329 U.S. 223, 228-229 (1946).

6. In this case, it is clear that Liberty has failed to furnish the Commission with complete and accurate information as to its alleged eligibility for a New Entrant Bidding Credit.

Rather than disclosing the true facts as to the ownership interests held by its principals, Liberty chose to be less than candid in hiding those interests. Proof that the Commission was, in fact, misled by Liberty's lack of candor is demonstrated by the fact that the Commission throughout the auction accorded Liberty a New Entrant Bidding Credit which it did not deserve. And, Liberty successfully utilized that New Entrant Bidding Credit to beat the other bidders at the auction. As such, the other applicants who took part in the auction have also been prejudiced by Liberty's misleading filing with the Commission. As noted by the Commission in its Policy Statement Regarding Character Qualifications, 102 FCC 2d 1179, 1210 (1986), truthfulness is one of the key elements of character necessary to operate a broadcast station in the public interest. Honesty in dealing with the Commission is absolutely necessary in order to maintain the integrity of the Commission's processes. 102 FCC 2d at 1211. By concealing its principal's ownership interest from the Commission and seeking a bidding credit which it clearly was not eligible for, Liberty has raised serious questions about whether it possesses the requisite character to hold a Commission license.²

7. For the foregoing reasons, issues in this proceeding should be enlarged to include the following issues against Liberty:

1. To determine whether Liberty has made misrepresentations to the Commission regarding its eligibility for a New Entrant Bidding Credit.
2. To determine in light of the evidence adduced on the foregoing issue whether Liberty is qualified to be a Commission licensee.

Pursuant to Section 1.229(e), this will identify those documents which Orion wishes Liberty to produce with respect to the requested issues. Liberty should provide a copy of any

² These serious questions regarding Liberty's lack of candor are independent of the other serious questions raised by Liberty's misrepresentation regarding its site availability.

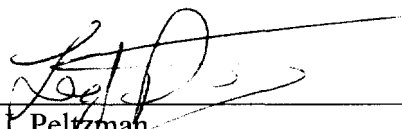
Ownership Reports for Station WLJQ(FM), Colonial Heights, Tennessee, as well as any other stations in which David T. Murray holds ownership interests.

Respectfully submitted,

ORION COMMUNICATIONS LIMITED

Shainis & Peltzman, Chartered
1901 L Street, NW - Suite 290
Washington, D.C. 20036
202 293 0011

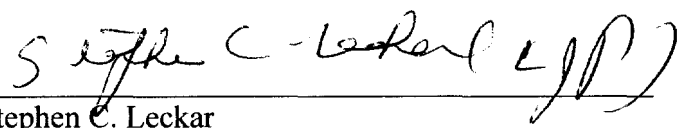
By:



Lee J. Peltzman
Its Attorney

Butera & Andrews
Suite 500
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
202 347 6785

By:



Stephen C. Leckar
Its Attorney

November 12, 1999

EXHIBIT 1

RECEIVED

DEC 4 1993

Approved by OMB
3080-0010
Expires 9/30/92

United States of America
Federal Communications Commission
Washington, D. C. 20544
FCC - MAIL ROOM

Ownership Report

NOTE: Before filling out this form, read attached instructions

Section 310(d) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license/permit or transfer of control (subject to report an assignment of license/permit or transfer of control made pursuant to prior Commission consent).

All of the information furnished in this Report is accurate as of

December 8, 1992 19 92

(Date must comply with Section 73.3515(a), i.e., information must be current within 60 days of the filing of this report, when 1(a) below is checked.)

This report is filed pursuant to instruction (check one)

(a) ☐ Annual (b) ☒ Transfer of Control or Assignment of License (c) ☐ Other

or the following station:

Call Letters: WLJQ Location: Colonial Heights, Tennessee Class of service: FM - A
DPR: 900220PM

Give the name of any corporation or other entity for whom a separate Report is filed due to its interest in the subject licensee (See instruction 3):

WLJQ A
NONE

Show the attributable interests in any other broadcast station of the respondent. Also, show any interest of the respondent, whether or not attributable, which is 5% or more of the ownership of any other broadcast station or any newspaper or CATV entity in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules.

NONE

CERTIFICATION

I certify that I am a General Partner
(Official title, see instruction 1)
of Murray Communications
(Exact legal title or name of respondent)

that I have examined this Report, that to the best of my knowledge and belief, all statements in the Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in item 1 and in no event prior to item 1 date):

David T. Murray Dec. 8 19 92
(Signature) (Date)

Telephone No. of respondent (include area code):

615-239-4745

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001.

Name and Post Office Address of respondent:

David T. Murray
1028 Woodstone Drive
Colonial Heights, TN 37663

4. Name of entity, if other than licensee or permittee, for which report is filed (see instruction 3):

N/A

5. Respondent is:

- ☐ Sole Proprietorship
☐ For-profit corporation
☐ Not-for-profit corporation
☒ General Partnership
☐ Limited Partnership
☐ Other: _____

If a limited partnership, is certification statement included as in instruction 4?

☐ Yes ☐ No N/A

6. List of contracts and other instruments required to be filed by Section 70.30(3) of the Commission's Rules and Regulations. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
NONE			

7. Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee, shall respond.)

Class of Stock (preferred, common or other)	Voting or Non-voting	Number of Shares		
		Authorized	Issued and Outstanding	Treasury
N/A				

Remarks concerning family relationships, attribution exemptions and certifications: (See Instructions 4, 5 and 6)

David T. Murray and Martha R. Murray are Husband and Wife

1. List officers, directors, cognizable stockholders and partners. Use one column for each individual or entity. Attach additional pages, if necessary. See instructions 4, 5, and 6.

Line (Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of officer, director, cognizable stockholder or partner (If other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and, thereafter, remaining stockholders and partners.
2. Citizenship.
3. Office or directorship held.
4. Number of shares or nature of partnership interest.
5. Number of votes.
6. Percentage of votes.
7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.
8. All other ownership interests of 1% or more (whether or not attributable), as well as any corporate officer or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 73.3571 of the Commission's Rules, including the nature and size of such interests and the position held.

1	(a) David T. Murray 1028 Woodstone Drive Colonial Heights, TN 37663	(b) Martha R. Murray 1028 Woodstone Drive Colonial Heights, TN 37663	(c)
2	USA	USA	
3	General Partner	General Partner	
4	50%	50%	
5	1	1	
6	50%	50%	
7	NONE	NONE	
8	NONE	NONE	

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to assure compliance with the Commission's multiple ownership restrictions. The staff, consisting variously of attorneys and examiners, will use the information to determine such compliance. If all the information requested is not provided, processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to retain your authorization.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974,
5 U.S.C. 552(a)(3) AND THE PAPERWORK REDUCTION ACT P.L. 96-611, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC 325-Page 3
February 1990

EXHIBIT 2

Auction ID 25 Closed Broadcast		FCC Account No. 0251707163													
Applicant Liberty Productions, A Limited Partnership															
Mail Address (No P.O. Boxes) 89 North Liberty															
City Asheville	State NC	ZIP Code 28801													
Applicant Classification <table><tr><td><input type="checkbox"/> Individual</td><td><input type="checkbox"/> Joint Venture</td><td><input checked="" type="checkbox"/> Partnership</td></tr><tr><td><input type="checkbox"/> Trust</td><td><input type="checkbox"/> Corporation</td><td><input type="checkbox"/> Consortium</td></tr><tr><td><input type="checkbox"/> Association</td><td><input type="checkbox"/> LLC</td><td><input type="checkbox"/> Govt. Entity</td></tr></table>				<input type="checkbox"/> Individual	<input type="checkbox"/> Joint Venture	<input checked="" type="checkbox"/> Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Corporation	<input type="checkbox"/> Consortium	<input type="checkbox"/> Association	<input type="checkbox"/> LLC	<input type="checkbox"/> Govt. Entity			
<input type="checkbox"/> Individual	<input type="checkbox"/> Joint Venture	<input checked="" type="checkbox"/> Partnership													
<input type="checkbox"/> Trust	<input type="checkbox"/> Corporation	<input type="checkbox"/> Consortium													
<input type="checkbox"/> Association	<input type="checkbox"/> LLC	<input type="checkbox"/> Govt. Entity													
Applicant Status/Eligibility <table><tr><td><input type="checkbox"/> Small Business</td><td><input type="checkbox"/> Rural Telephone Company</td></tr><tr><td><input type="checkbox"/> Very Small Business</td><td><input type="checkbox"/> Minority Owned Business</td></tr><tr><td><input checked="" type="checkbox"/> New Entrant</td><td><input checked="" type="checkbox"/> Woman Owned Business</td></tr><tr><td></td><td><input type="checkbox"/> Noncommercial Educational</td></tr><tr><td>35 % Bidding Credit Percentage</td><td><input type="checkbox"/> None of the Above</td></tr><tr><td colspan="2">___ Installment Payment Plan</td></tr></table>				<input type="checkbox"/> Small Business	<input type="checkbox"/> Rural Telephone Company	<input type="checkbox"/> Very Small Business	<input type="checkbox"/> Minority Owned Business	<input checked="" type="checkbox"/> New Entrant	<input checked="" type="checkbox"/> Woman Owned Business		<input type="checkbox"/> Noncommercial Educational	35 % Bidding Credit Percentage	<input type="checkbox"/> None of the Above	___ Installment Payment Plan	
<input type="checkbox"/> Small Business	<input type="checkbox"/> Rural Telephone Company														
<input type="checkbox"/> Very Small Business	<input type="checkbox"/> Minority Owned Business														
<input checked="" type="checkbox"/> New Entrant	<input checked="" type="checkbox"/> Woman Owned Business														
	<input type="checkbox"/> Noncommercial Educational														
35 % Bidding Credit Percentage	<input type="checkbox"/> None of the Above														
___ Installment Payment Plan															
MX Group No. and Channels selected by applicant. <u>SEE BELOW FOR COMPLETE LIST OF CONSTRUCTION PERMITS</u>															
Person(s) authorized to make or withdraw a bid (a) Valerie J Klemmer (b) Timothy K Brady (c) Lauren A Colby															
Name of Person Certifying Valerie J Klemmer		Title of Person Certifying General Partner													
Contact Person Valerie J Klemmer		E-mail address tkbrady@bellsouth.net													

Date Aug 19 1999 5:17PM	Telephone No. (828)254-4778	FAX No. (828)254-6646
Initial Date Aug 19 1999 5:17PM	Resub Date	Date Last Change Aug 19 1999 5:17PM
Application Certification FILES EXIST		

CONSTRUCTION PERMITS LIST

MX Group No.	Channel	Location	Case File Number
FM84	-	Biltmore Forest, NC	BPH-870831MI

ATTACHMENTS

Type	Date	Description	Contents
Ownership	Aug 19 1999 5:13PM	bilta	6113_1.pdf
Arrangement	Aug 19 1999 5:14PM	biltb	6113_2.pdf
Certification	Aug 19 1999 5:15PM	biltc	6113_3.pdf
Request	Aug 19 1999 5:15PM	biltd	6113_4.pdf
Other	Aug 19 1999 5:16PM	bilte	6113_5.pdf

EXHIBIT A

Applicant

Liberty Productions, A Limited Partnership
89 North Liberty
Asheville, NC 28801

Principals

Valerie Klemmer
89 North Liberty
Asheville, NC 28801

US Citizen

General Partner

1 Vote

100% voting rights

35% Equity interest

David T. Murray
1028 Woodstone Drive
Colonial Heights, TN 37663

US Citizen

Limited Partner

0 Votes

0% Voting rights

65% Equity interest

The applicant hereby certifies under penalty of perjury that no limited partner is or will be materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership.

EXHIBIT B

Applicant currently has no such agreements or understandings to report.

EXHIBIT C

Applicant hereby certifies under penalty of perjury that neither it nor any of its attributable interest holders have any attributable interest in any other media of mass communications as defined in 47 CFR 73.5008

Applicant further certifies under penalty of perjury that no limited partner is or will be materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership.

EXHIBIT D

Applicant is female owned.

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator in the law offices of Shainis & Peltzman, Chartered, do hereby certify that on this 12th day of November, 1999, copies of the foregoing document were sent, via first-class United States Mail, postage pre-paid, to the following persons:

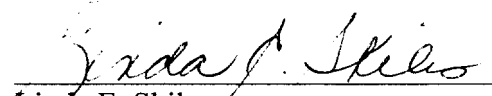
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Annapolis, MD 21404

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Associate General Counsel
Federal Communications Commission
445 12th Street, S.W. - Room 8-A660
Washington, D.C. 20554


Linda E. Skiles

*Via Hand Delivery